



House of Representatives

General Assembly

File No. 650

January Session, 2007

Substitute House Bill No. 7313

House of Representatives, April 30, 2007

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DOMESTIC VIOLENCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-63c of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Except in cases of arrest pursuant to a bench warrant of arrest in
4 which the court or a judge thereof has indicated that bail should be
5 denied or ordered that the officer or indifferent person making such
6 arrest shall, without undue delay, bring such person before the clerk or
7 assistant clerk of the superior court for the geographical area under
8 section 54-2a, when any person is arrested for a bailable offense, the
9 chief of police, or the chief's authorized designee, of the police
10 department having custody of the arrested person shall promptly
11 advise such person of the person's rights under section 54-1b, and of
12 the person's right to be interviewed concerning the terms and
13 conditions of release. Unless the arrested person waives or refuses
14 such interview, the police officer shall promptly interview the arrested
15 person to obtain information relevant to the terms and conditions of

16 the person's release from custody, and shall seek independent
17 verification of such information where necessary. At the request of the
18 arrested person, the person's counsel may be present during the
19 interview. No statement made by the arrested person in response to
20 any question during the interview related to the terms and conditions
21 of release shall be admissible as evidence against the arrested person in
22 any proceeding arising from the incident for which the conditions of
23 release were set. After such a waiver, refusal or interview, the police
24 officer shall promptly order release of the arrested person upon the
25 execution of a written promise to appear or the posting of such bond as
26 may be set by the police officer, except that no condition of release set
27 by the court or a judge thereof may be modified by such officer and no
28 person shall be released upon the execution of a written promise to
29 appear or the posting of a bond without surety if the person is charged
30 with the commission of a family violence crime, as defined in section
31 46b-38a, and in the commission of such crime the person used or
32 threatened the use of a firearm.

33 (b) If the person is charged with the commission of a family violence
34 crime, as defined in section 46b-38a, the police officer shall notify a bail
35 commissioner. If, after reasonable efforts have been made to contact a
36 bail commissioner, a bail commissioner is unavailable, the police
37 officer may impose nonfinancial conditions of release which may
38 require that the arrested person do one or more of the following: (1)
39 Avoid all contact with the alleged victim of the crime, (2) comply with
40 specified restrictions on the person's travel, association or place of
41 abode that are directly related to the protection of the alleged victim of
42 the crime, or (3) not use or possess a dangerous instrument, intoxicant
43 or controlled substance. Any such nonfinancial conditions of release
44 shall be indicated on a form prescribed by the Judicial Branch and
45 sworn to by the police officer. Such form shall articulate (A) the efforts
46 that were made to contact a bail commissioner, (B) the specific factual
47 basis relied upon by the police officer to impose the nonfinancial
48 conditions of release, and (C) if the arrested person was non-English-
49 speaking, that the services of a translation service or interpreter were
50 used. A copy of that portion of the form that indicates the nonfinancial

51 conditions of release shall immediately be provided to the arrested
52 person. A copy of the entire form shall be provided to counsel for the
53 arrested person at arraignment. Any nonfinancial conditions of release
54 imposed pursuant to this subsection shall remain in effect until the
55 arrested person is presented before the superior court pursuant to
56 subsection (a) of section 54-1g. On such date, the court shall conduct a
57 hearing pursuant to section 46b-38c at which the defendant is entitled
58 to be heard with respect to the issuance of a protective order.

59 (c) When cash bail in excess of ten thousand dollars is received for a
60 detained person accused of a felony, where the underlying facts and
61 circumstances of the felony involve the use, attempted use or
62 threatened use of physical force against another person, the police
63 officer shall prepare a report that contains (1) the name, address and
64 taxpayer identification number of the accused person, (2) the name,
65 address and taxpayer identification number of each person offering the
66 cash bail, other than a person licensed as a professional bondsman
67 under chapter 533 or a surety bail bond agent under chapter 700f, (3)
68 the amount of cash received, and (4) the date the cash was received.
69 Not later than fifteen days after receipt of such cash bail, the police
70 officer shall file the report with the Department of Revenue Services
71 and mail a copy of the report to the state's attorney for the judicial
72 district in which the alleged offense was committed and to each person
73 offering the cash bail.

74 (d) No police officer shall set the terms and conditions of a person's
75 release, set a bond for a person or release a person from custody under
76 this [subsection] section unless the police officer has first checked the
77 National Crime Information Center (NCIC) computerized index of
78 criminal justice information to determine if such person is listed in
79 such index.

80 (e) If the arrested person has not posted bail, the police officer shall
81 immediately notify a bail commissioner.

82 [(b)] (f) The chief, acting chief, superintendent of police, the
83 Commissioner of Public Safety, any captain or lieutenant of any local

84 police department or the Division of State Police within the
85 Department of Public Safety or any person lawfully exercising the
86 powers of any such officer may take a written promise to appear or a
87 bond with or without surety from an arrested person as provided in
88 subsection (a) of this section, or as fixed by the court or any judge
89 thereof, may administer such oaths as are necessary in the taking of
90 promises or bonds and shall file any report required under subsection
91 [(a)] (c) of this section.

92 Sec. 2. Subsection (c) of section 46b-38b of the general statutes is
93 repealed and the following is substituted in lieu thereof (*Effective*
94 *October 1, 2007*):

95 (c) No peace officer shall be held liable in any civil action regarding
96 personal injury or injury to property brought by any party to a family
97 violence incident for an arrest based on probable cause or for any
98 conditions of release imposed pursuant to subsection (b) of section 54-
99 63c, as amended by this act.

100 Sec. 3. Section 53a-222 of the general statutes is repealed and the
101 following is substituted in lieu thereof (*Effective October 1, 2007*):

102 (a) A person is guilty of violation of conditions of release in the first
103 degree when, while charged with the commission of a felony,
104 [misdemeanor or motor vehicle violation for which a sentence to a
105 term of imprisonment may be imposed,] such person is released
106 pursuant to subsection (b) of section 54-63c, as amended by this act,
107 subsection (c) of section 54-63d or subsection (c) of section 54-64a, [on
108 the condition that such person (1) avoid all contact with the alleged
109 victim or (2) not use or possess a dangerous weapon, and such person]
110 and intentionally violates [that condition] one or more of the imposed
111 conditions of release.

112 (b) Violation of conditions of release in the first degree is a class [A
113 misdemeanor] D felony.

114 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) A person is guilty of

115 violation of conditions of release in the second degree when, while
116 charged with the commission of a misdemeanor or motor vehicle
117 violation, such person is released pursuant to subsection (b) of section
118 54-63c, as amended by this act, subsection (c) of section 54-63d or
119 subsection (c) of section 54-64a of the general statutes and intentionally
120 violates one or more of the imposed conditions of release.

121 (b) Violation of conditions of release in the second degree is a class
122 A misdemeanor.

123 Sec. 5. Section 53a-40e of the general statutes is repealed and the
124 following is substituted in lieu thereof (*Effective October 1, 2007*):

125 (a) If any person is convicted of (1) a violation of section 53a-59, 53a-
126 59a, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-70, 53a-70a, 53a-70b, 53a-71,
127 53a-72a, 53a-72b, 53a-181c, 53a-181d, 53a-181e, [or] 53a-182b, 53a-183,
128 53a-223, 53a-223a or 53a-223b or [of] attempt or conspiracy to violate
129 any of said sections or section 53a-54a, against a family or household
130 member, as defined in [subdivision (2) of] section 46b-38a, or (2) any
131 crime that the court determines constitutes a family violence crime, as
132 defined in section 46b-38a, or attempt or conspiracy to commit any
133 such crime, the court may, in addition to imposing the sentence
134 authorized for the crime under section 53a-35a or 53a-36, if the court is
135 of the opinion that the history and character and the nature and
136 circumstances of the criminal conduct of such offender indicate that a
137 standing criminal restraining order will best serve the interest of the
138 victim and the public, issue a standing criminal restraining order
139 which shall remain in effect until modified or revoked by the court for
140 good cause shown. If any person is convicted of any crime against a
141 family or household member, as defined in section 46b-38a, other than
142 a crime specified in subdivision (1) or (2) of this subsection, the court
143 may, for good cause shown, issue a standing criminal restraining order
144 pursuant to this subsection.

145 (b) Such standing criminal restraining order may include but is not
146 limited to enjoining the offender from (1) imposing any restraint upon
147 the person or liberty of the victim; (2) threatening, harassing,

148 assaulting, molesting, sexually assaulting or attacking the victim; or (3)
149 entering the family dwelling or the dwelling of the victim.

150 (c) Every standing criminal restraining order of the court made in
151 accordance with this section shall contain the following language:
152 "This order shall remain in effect until modified or revoked by the
153 court for good cause shown. In accordance with section 53a-223a,
154 violation of a standing criminal restraining order issued by the court
155 pursuant to subsection (a) of this section shall be punishable by a term
156 of imprisonment of not less than one year nor more than five years, a
157 fine of not more than five thousand dollars or both."

158 Sec. 6. Subdivision (20) of section 53a-3 of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective*
160 *October 1, 2007*):

161 (20) "Electronic defense weapon" means a weapon which by
162 electronic impulse or current is capable of immobilizing a person
163 temporarily, but is not capable of inflicting death or serious physical
164 injury, including a stun gun or other conductive energy device.

165 Sec. 7. Subsection (a) of section 46b-38b of the general statutes is
166 repealed and the following is substituted in lieu thereof (*Effective*
167 *October 1, 2007*):

168 (a) Whenever a peace officer determines upon speedy information
169 that a family violence crime, except a family violence crime involving a
170 dating relationship, has been committed within such officer's
171 jurisdiction, such officer shall arrest the person or persons suspected of
172 its commission and charge such person or persons with the
173 appropriate crime. The decision to arrest and charge shall not (1) be
174 dependent on the specific consent of the victim, (2) consider the
175 relationship of the parties, or (3) be based solely on a request by the
176 victim. Whenever a peace officer determines that a family violence
177 crime has been committed, such officer may seize any firearm or
178 electronic defense weapon, as defined in section 53a-3, as amended by
179 this act, at the location where the crime is alleged to have been

180 committed that is in the possession of any person arrested for the
181 commission of such crime or suspected of its commission or that is in
182 plain view. Not later than seven days after any such seizure, the law
183 enforcement agency shall return such firearm or electronic defense
184 weapon in its original condition to the rightful owner thereof unless
185 such person is ineligible to possess such firearm or electronic defense
186 weapon or unless otherwise ordered by the court.

187 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) A person is guilty of
188 strangulation in the first degree when such person commits
189 strangulation in the second degree as provided in section 9 of this act
190 and (1) in the commission of such offense, such person (A) uses or
191 attempts to use a dangerous instrument, or (B) causes serious physical
192 injury to such other person, or (2) such person has previously been
193 convicted of a violation of this section or section 9 of this act.

194 (b) No person shall be found guilty of strangulation in the first
195 degree and unlawful restraint or assault upon the same incident, but
196 such person may be charged and prosecuted for all three offenses
197 upon the same information. For the purposes of this section, "unlawful
198 restraint" means a violation of section 53a-95 or 53a-96 of the general
199 statutes, and "assault" means a violation of section 53a-59, 53a-59a, 53a-
200 59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a of the
201 general statutes.

202 (c) Strangulation in the first degree is a class C felony.

203 Sec. 9. (NEW) (*Effective October 1, 2007*) (a) A person is guilty of
204 strangulation in the second degree when such person restrains another
205 person by the neck or throat with the intent to impede the ability of
206 such other person to breathe or restrict blood circulation of such other
207 person and such person impedes the ability of such other person to
208 breathe or restricts blood circulation of such other person.

209 (b) No person shall be found guilty of strangulation in the second
210 degree and unlawful restraint or assault upon the same incident, but
211 such person may be charged and prosecuted for all three offenses

212 upon the same information. For the purposes of this section, "unlawful
 213 restraint" means a violation of section 53a-95 or 53a-96 of the general
 214 statutes, and "assault" means a violation of section 53a-59, 53a-59a, 53a-
 215 59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a of the
 216 general statutes.

217 (c) Strangulation in the second degree is a class D felony.

218 Sec. 10. (NEW) (*Effective October 1, 2007*) (a) A person is guilty of
 219 strangulation in the third degree when such person recklessly restrains
 220 another person by the neck or throat and impedes the ability of such
 221 other person to breathe or restricts blood circulation of such other
 222 person.

223 (b) No person shall be found guilty of strangulation in the third
 224 degree and unlawful restraint or assault upon the same incident, but
 225 such person may be charged and prosecuted for all three offenses
 226 upon the same information. For the purposes of this section, "unlawful
 227 restraint" means a violation of section 53a-95 or 53a-96 of the general
 228 statutes, and "assault" means a violation of section 53a-59, 53a-59a, 53a-
 229 59b, 53a-59c, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-61 or 53a-61a of the
 230 general statutes.

231 (c) Strangulation in the third degree is a class A misdemeanor.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	54-63c
Sec. 2	<i>October 1, 2007</i>	46b-38b(c)
Sec. 3	<i>October 1, 2007</i>	53a-222
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	53a-40e
Sec. 6	<i>October 1, 2007</i>	53a-3(20)
Sec. 7	<i>October 1, 2007</i>	46b-38b(a)
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Correction, Dept.; Judicial Department (Probation)	GF - Cost	Potential	Potential
Judicial Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill establishes three new crimes of assault by strangulation, and increases the penalties for certain violations of release conditions. This provision may result in additional violations of restraining orders. To the extent that the bill increases the likelihood that offenders would be prosecuted or receive harsher penalties, a revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community may result. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$2,500 to supervise an offender on probation in the community as compared to \$41,600 to incarcerate the offender (note that both figures include fringe benefits).

The bill makes various other changes relating to the issuance of restraining orders, which are not anticipated to result in a fiscal impact on state and local police departments.

The Out Years

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation. Potential revenues would continue into the future, subject to the rate of violations.

OLR Bill Analysis**sHB 7313*****AN ACT CONCERNING DOMESTIC VIOLENCE.*****SUMMARY:**

This bill establishes three new crimes of strangulation.

It expands the circumstances under which a court may issue a standing criminal restraining order.

It requires police officers to notify a bail commissioner when someone is arrested for committing a family violence crime. If the bail commissioner is not available after reasonable efforts, the bill specifies nonfinancial conditions that the officers may set when releasing the arrestee. The bill absolves police officers of liability in any civil action for personal or property injuries resulting from the release conditions.

It makes family violence arrestees guilty of a crime if they intentionally violate a nonfinancial condition of release set by a police officer. It increases the penalty for violation of release conditions for anyone who is arrested for committing a felony and intentionally violates a nonfinancial condition of release set by a bail commissioner or court.

The bill allows law enforcement officers to seize any electronic defense weapon that is in plain view or possessed by the arrestee at a family violence crime site. They can already seize firearms. Just as with firearms, the bill requires the officers to return the weapons within seven days to their lawful owners if they are eligible to possess them and a court has not ordered otherwise.

Lastly, the bill specifies that stun guns and other conductive energy devices are types of electronic defense weapons. By law, it is illegal for

anyone, other than a peace officer on official duty, to possess or carry these weapons in a motor vehicle or on his person.

EFFECTIVE DATE: October 1, 2007

STRANGULATION

The bill makes a person guilty of 2nd degree strangulation when he or she intentionally and actually impedes another person's breathing or blood circulation by restraining the person by the throat or neck. The crime is a class D felony, punishable by up to five years in prison, a \$5,000 fine, or both.

A person commits 1st degree strangulation if he or she (1) is a repeat offender of 2nd degree strangulation or (2) commits 2nd degree strangulation and either causes serious physical injury or uses or attempts to use a dangerous instrument. This crime is a class C felony, punishable by up to 10 years in prison, a \$10,000 fine, or both.

A person commits 3rd degree strangulation if he or she recklessly restrains another person by the throat or neck and impedes the person's breathing or blood circulation. This crime is a class A misdemeanor, punishable by up to one year in prison, a \$2,000 fine, or both.

Under the bill, no one can be found guilty of strangulation and 1st or 2nd degree unlawful restraint or assault for the same incident; however, the person may be charged with all three crimes in the same information (charging document). "Assault" means:

1. 1st, 2nd, and 3rd degree assault;
2. 1st and 2nd degree assault of a person who is aged, blind, disabled, pregnant, or mentally retarded;
3. 2nd degree assault with a firearm;
4. 1st degree assault of a Department of Correction employee;

5. assault of a pregnant woman; and
6. assault with a motor vehicle.

STANDING CRIMINAL RESTRAINING ORDER

By law, courts can issue these orders, in addition to the sentence authorized by law, in certain criminal cases to protect crime victims from future harm. The orders may, among other things, prohibit the offender from restraining, threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the victim, or entering the victim's home. The criminal cases covered are those involving the commission of, or attempt or conspiracy to commit:

1. murder;
2. 1st and 2nd degree assault;
3. 1st and 2nd degree assault of an aged, blind, disabled, pregnant, or mentally retarded person;
4. 2nd and 3rd degree assault with a firearm;
5. 2nd degree assault with a firearm of an aged, blind, disabled, pregnant, or mentally retarded person;
6. 1st, 2nd, and 3rd degree sexual assault;
7. aggravated 1st degree sexual assault;
8. sexual assault in a spousal or cohabitating relationship;
9. stalking; and
10. criminal violation of a protective order.

Before issuing the order, the court must find that the (1) victim is a member of the offender's family or household member and (2) order will best serve the victim and public's interest given the history, character, nature, and circumstances of the crime. The orders are

effective until a court modifies or revokes them for good cause. Violation of a standing criminal restraining order is punishable by up to five years in prison, a \$5,000 fine, or both.

The bill permits the court to issue the order under the same conditions stated above when a person is convicted of attempting or conspiring to commit:

1. 1st or 2nd degree harassment,
2. criminal violation of a restraining order,
3. criminal violation of a standing criminal restraining order, or
4. a family violence crime (see BACKGROUND).

The bill also permits a court to issue a standing criminal restraining order when a person is convicted of any crime against a family or household member, rather than just the ones listed. In these cases the court may issue the order for good cause shown and does not have to find the order to be in the best interest of the victim or the public. "Family or household members" are spouses, former spouses, parents and their children, people age 18 or older related by blood or marriage, people age 16 or older either living together or who have lived together, people who have a child together, and people in or who once were in a dating relationship.

CONDITIONAL RELEASE OF FAMILY VIOLENCE CRIME ARRESTEES

By law, when a person is taken into custody for a bailable family violence offense and a court has not ordered otherwise, a police officer must interview the person and then determine the terms and conditions of release and release anyone who posts a bond in an amount the officer sets. If the person cannot post bail, the officer notifies the bail commissioner, who determines the appropriate bail.

Bail Statements

The bill prohibits any statement an arrestee makes in a bail

interview from being admitted as evidence in any proceeding related to the incident for which bail was set.

Nonfinancial Bail Conditions

The bill requires the police officers to try to locate a bail commissioner before setting conditions to release anyone arrested for a family violence crime. If a commissioner is unavailable after reasonable efforts have been made to contact him or her, the bill allows police officers to set release conditions that require an arrestee to:

1. avoid all contact with the alleged victim;
2. comply with any restrictions on travel, associations, or living accommodations that directly relate to the victim's protection;
or
3. refrain from using or possessing a dangerous instrument, intoxicant, or controlled substance.

(Presumably police officers can set these nonfinancial conditions only in cases where the arrestee did not use or threaten to use a firearm since current law prohibits releases without surety in these cases.)

Each officer must state, and swear to, these nonfinancial conditions of release on a form prescribed by the Judicial Branch. The form must also state (1) the officer's efforts to contact a bail commissioner, (2) the officer's basis for imposing specific conditions, and (3) whether a translation service or an interpreter was used to communicate with a non-English-speaking arrestee.

The arrestee must immediately receive a copy of the bail conditions and a copy of the entire form must be provided to his or her attorney at arraignment. The conditions are effective until the arrestee is arraigned, at which time the court must determine whether to issue a protective order. The bill requires the court to "conduct a hearing" at which defendants have a right to be heard "with respect to the issuance of protective orders" (see COMMENT).

Penalties for Violating Bail Conditions

Under current law, a person charged with a felony misdemeanor or certain motor vehicle offenses violates a condition of release when he or she intentionally contacts a crime victim or uses or possesses a dangerous weapon in violation of his or her release conditions. The crime covers motor vehicle violations that subject offenders to a term of imprisonment. The crime is a class A misdemeanor (see penalty above).

The bill separates the crime into two. It makes it 2nd degree violation of release conditions for a person (1) charged with a misdemeanor or any motor vehicle violation, rather than just those that carries a term of imprisonment, and (2) released on nonfinancial conditions set by a bail commissioner, court, or police officer in family violence cases to intentionally violate one or more of the conditions. This crime is a class A misdemeanor (see penalty above). The bill makes it 1st degree violation of release conditions and increases the penalty by changing the classification to a D felony if the arrestee is charged with a felony.

BACKGROUND***Family Violence Crime***

A “family violence crime” is an incident between family or household members that either causes physical injury or creates fear that physical injury is about to occur, but does not include verbal abuse or arguments.

Electronic Defense Weapon

An electronic defense weapon is one capable of immobilizing, but not killing or seriously injuring, a person through the use of an electronic impulse or current.

Restraining and Protective Orders

Restraining and protective orders are court-issued, civil and criminal orders, respectively, typically issued to protect victims of family violence crimes from threatened or further harm. These orders

may, among other things, prohibit the respondents from restraining, threatening, harassing, assaulting, molesting, sexually assaulting, or attacking the victim, or entering the victim's home. Restraining orders are generally effective for six months. Protective orders are a condition of bail or other release from custody.

COMMENT***Issuing Protective Orders***

The bill requires the court to "conduct a hearing" at which defendants have a right to be heard "with respect to the issuance of protective orders. However, these orders are, by law, issued as a condition of bail or release.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/12/2007)